Office Supreme Court U. S.
OCT 18 1900
JAMES H. MCKENNEY, CLERK

No. 287.

Sup. Ct. of Davison, Law Pr.

Filed Oct. 18, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 287.

R. A. WILLIAMS, PLAINTIFF IN ERROR,

vs.

EDGAR FEARS, SHERIFF, AND R. B. AYCOCK, JAILER.

IN ERROR TO THE SUPREME COURT OF GEORGIA.

SUPPLEMENTAL BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

JAMES DAVISON,
Counsel for Plaintiff in Error.

(17,771.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10-18-1900

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 287.

R. A. WILLIAMS, PLAINTIFF IN ERROR,

vs.

EDGAR FEARS, SHERIFF, AND R. B. AYCOCK, JAILER.

IN ERROR TO THE SUPREME COURT OF GEORGIA.

SUPPLEMENTAL BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

It becomes proper for counsel to file an additional brief in this case to review the cases of (1) Osborne *vs.* Mobile, 16 Wallace, 499; (2) Wiggins Ferry Co. *vs.* East St. Louis, 107 U. S., 365, and (3) Ficklen *vs.* Shelby County, 145 U. S., 1, these three cases being cited in the brief of counsel for the defendants in error.

These cases were not cited in the court below, and the brief of counsel for defendants is the first information to

counsel for plaintiff that they would be relied upon in this argument.

1. Osborne *vs.* Mobile and Wiggins Ferry Co. *vs.* East St. Louis are cases where a license was required as a preliminary to carrying on a business. The earlier cases distinguished between a license as a preliminary to conducting a business and taxation on the occupation of carrying it on.

The following cases do not seem to be in harmony with these cases:

Moran *vs.* New Orleans, 112 U. S., 69.
Pickert *vs.* Pullman Co., 117 U. S., 34.
Steamship Co. *vs.* Pennsylvania, 122 U. S., 326.
Leloup *vs.* Mobile, 127 U. S., 641.
Harman *vs.* Chicago, 147 U. S., 396.

The progress of judicial decisions on this question is stated in Commerce Clause Federal Constitution, pp. 268–273.

But this discussion is foreign to this case. The question is, Can the State impose a tax on an *occupation* connected with interstate commerce? The power to impose a license as a preliminary to engaging in a business is not an issue here. This is admitted by part II of defendants' brief and by the opinion of Mr. Justice Cobb, on page 15 of the printed record.

It may be asserted without fear of contradiction that no tax imposed by a State on an *occupation* connected with interstate commerce has ever been upheld by this court.

2. The case of Ficklen *vs.* Shelby County, 145 U. S., 1, has the force of a perfectly sound and correct proposition of law, aside from the fact that it becomes such by the declaration

of this court. However, that case is really authority against the defendants. What is decided is:

"Where a resident citizen engages in a general business subject to a particular tax, the fact that the business done chances to consist, for the time being, wholly or partially in negotiating sales between resident and non-resident merchants * * * does not necessarily involve the taxation of interstate commerce."

The business there taxed was a general commission business. The interstate feature was an incident of the tax, not the object of the law. In this case the only business of hiring taxed, is hiring for transportation and employment *beyond* the State. Taxation on interstate commerce is the *object* of the act. If the Ficklen case had imposed a tax on brokers acting for *non-resident* principals alone, it would be a parallel case to this; or if the Georgia legislature had imposed a tax on all employment agencies, it would not be repugnant to the commerce clause.

That the Ficklen case can avail these defendants nothing is made absolutely clear by these quotations. On page 20 Mr. Chief Justice Fuller uses this language:

"Interstate commerce may be legitimately incidentally affected by State laws, when they, among other things, provide for the imposition of taxes upon pefsons residing in the State, or belonging to its population, and upon avocations and employments pursued therein, *not directly connected with foreign or interstate commerce.*"

On page 21 the Chief Justice continues:

"They were thereby authorized to do any and all kinds of commission business. * * * Although their principals

happened, during 1887, as to the one party, to be wholly non-resident, and as to the other largely such, this fact might have been otherwise, *as their business was not confined to transactions for non-residents.*"

In Brenan *vs.* Titusville, 153 U. S., on page 306, Mr. Justice Brewer, reviewing Ficklen *vs.* Shelby County, says:

"The case of Ficklen *vs.* Shelby County is no departure from the rule of decision so firmly established by the prior cases. At least, no departure was intended, though, as shown by the division in the court, and the dissenting opinion of Mr. Justice Harlan, the case was near the boundary line of the State's power."

And again, on page 308, these words of the Chief Justice, used in the Ficklen case, are quoted, that—

"No State can levy a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived therefrom, *or on the occupation or business of carrying it on.*"

This may now be accepted as a legal axiom.

JAMES DAVISON,
Counsel for Plaintiff in Error.

GREENESBORO, GEORGIA.